

THE HONORABLE JUDGE THOMAS ZILLY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERIC MATTHEW SCHOENBERG,

Plaintiff,

v.

WINDSTAR CRUISES LLC, et al,

Defendants.

No. 2:20—cv-01485—TSZ

MOTION TO RECONSIDER THE
COURT’S ORDER DENYING
PLAINTIFF’S COUNSEL MOTION
TOWITHDRAW AS PLAINTIFFS’
COUNSEL OF RECORD PURSUANT
TO FCRP 7.3(B)

NOTED FOR HEARING:

APRIL 8, 2021

I. MOTION TO WITHDRAW

COMES NOW Attorney James McCanna and respectfully moves the court to
reconsider its order denying his request to withdraw as attorney of record for Plaintiff Eric
Schoenberg in the above referenced matter. This motion is made pursuant to Fed. R. Civ. R.
7.3(b) and based on the subjoined declaration of counsel.

Rule 7.3(b) states that

MOTION TO RECONSIDER MOTION TO
WITHDRAW - 1

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1 (b) Non-Dispositive Orders. Parties seeking reconsideration of non-dispositive orders must
2 file a motion within 14 days after the order is filed unless the court extends the time. A
motion to reconsider must be based on:

- 3 (1) an intervening change in controlling law;
4 (2) the availability of new evidence; or
5 (3) the need to correct clear error or prevent manifest injustice.

6 In this instance, there is new evidence to support Plaintiff's counsel's motion to
7 withdraw as described in the Declaration of James McCanna below.

8 Denial of this motion would be manifestly unjust to force Mr. McCanna to continue
9 to represent a wholly unresponsive client.

10 RESPECTFULLY SUBMITTED this 8th day of April, 2021.
11

12 /s/ JAMES MCCANNA

13 James McCanna, WSBA # 22565
14 McCanna Law, PLLC
15 P.O. Box 468
Kingston, WA 98346

16 **II. DECLARATION OF COUNSEL**

17 COMES NOW James McCanna, under penalty of perjury under the laws of the
18 State of Washington, and deposes and testifies as follows:
19

20 1. I am the attorney of record for Plaintiff Eric Schoenberg in this matter, I make this
21 declaration based upon personal knowledge, and I am competent to make the same.

22 2. As indicated in my initial motion and surreply, I had sent a certified letter to
23 Plaintiff Schoenberg letting him know I was withdrawing. It was returned to me. As a
24 result, I no longer had a good last known address. I attach the returned letter as Exhibit 1 to
25 this Declaration and Motion.
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27

1 3. I failed to certify that my motion to withdraw on defense counsel and on the
2 plaintiff when I filed my motion to withdraw. That was my error in failing to do that and I
3 apologize to the court and to defense counsel.

4 4. Despite failing to certify service on Plaintiff in my initial Motion to Withdraw, I did
5 serve Plaintiff with the motion to withdraw via email at ericmschoenberg@icloud.com on
6 March 11, 2021, the day I filed the initial motion. Since I had received the certified letter
7 back I served him via email.

8 5. I first learned of Plaintiff's criminal drug convictions when I received Defendant's
9 Response to my initial motion to withdraw. This evidence was new to me and would have
10 certainly shaped my assessment of the case had I known.

11 6. Prior to that time, I was unaware of any substance abuse issues that my client may
12 be facing.

13 7. Immediately after receiving the court's order denying my motion to withdraw on
14 April 2, 2021, I sent an email and left a voicemail for Mr. Schoenberg and advised him that
15 the court denied my motion, that I was still his lawyer and he must contact me immediately.

16 8. On April 2, 2021, I called his mother and advised her the of same. She confirmed
17 that there was a drug use issue. I told her that would have been important for me to know
18 and she said that she would have thought he would tell me. I asked that if she heard from
19 him to get him to contact me.

20 9. Despite these efforts I still have not had any response from plaintiff since February
21 23, 2021.

22 10. I do not know where he is living.

23 11. I do not know what he wishes to do with this lawsuit.
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12. I have a good-faith belief that the attorney-client relationship has irreparably broken
down under these facts.

13. I have made extensive efforts to communicate with my client and he has not
responded.

14. I renew my request to be allowed to withdraw.

Signed 4/8/21,

By: /s/ James McCanna

James K. McCanna, WSBA NO. 22565

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Email: jmccanna@mccannalaw.com

CERTIFICATE OF SERVICE

I CERTIFY that on the 8th day of April, 2021, I served a copy of this motion for
reconsideration on by email to Katharine Tylee Herz at KateTyleeHerz@dwt.com and via
the court's portal.

I CERTIFY that I served this motion on Plaintiff Eric Schoenberg at
ericmschoenberg@icloud.com and at his last known address of **Eric Schoenberg**
1819 23rd Avenue, Apt. 308W Seattle, WA 98122 via U.S. Mail First Class, postage-
prepaid.

Dated April 8, 2021.

/s/James McCanna

James K. McCanna

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